

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LEE H. WAGNER,	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 11-762
	)	
	)	
DISTRICT ATTORNEY OF	)	
ALLEGHENY COUNTY,	)	
PENNSYLVANIA,	)	
Defendant.	)	
	)	

**MEMORANDUM ORDER**

CONTI, District Judge

On June 9, 2011, the above-captioned case was filed in this court and was referred to a magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges.

The magistrate judge filed a report and recommendation on February 15, 2012 (ECF No. 24), recommending that the court order granting the motion to proceed *in forma pauperis* (ECF No. 4) filed by Lee H. Wagner (“plaintiff”) be vacated in accordance with 28 U.S.C. § 1915(g) and that the action be dismissed for plaintiff’s failure to pay the filing fee, with the right of plaintiff to reopen by paying the full \$350.00 filing fee within sixty days. Plaintiff was served with the report and recommendation at his listed address and advised that he had fourteen days to file written objections to the report and recommendation.

On February 23, and 28, 2012 plaintiff filed objections to the report (ECF Nos. 25, 26 & 27). In his objections, plaintiff states that he is not a party to the actions listed in the report,

which support the magistrate judges determination that the three strikes rule is applicable. A review of the listed civil actions clearly shows that “Lee H. Wagner prisoner number AJ-2441” is identified as the plaintiff in each of these actions, which were dismissed as frivolous. (Copies of the docket sheets in those cases, of which this court takes judicial notice, are attached to this order.) “Lee H. Wagner prisoner number AJ-2441” is identified as the plaintiff in this action. Therefore, plaintiff’s objections have no merit and are overruled.

Plaintiff sued the same defendant, the Allegheny County District Attorney, in two of his prior cases and his current action is against the same defendant. The only conclusions that can be drawn from these facts is either that plaintiff is trying to circumvent the three strikes rule or he has cognitive difficulties which impede his ability to remember the events surrounding his prior cases. Moreover, in his quest to seek *in forma pauperis* status, he improperly disparages the integrity of the magistrate judge when the court records (see attached docket sheets) clearly show he filed three prior cases which were dismissed as frivolous.

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation, and the objections thereto, the following order is entered:

**AND NOW**, this 9th day of March, 2012;

**IT IS HEREBY ORDERED** that the court order granting plaintiff’s motion to proceed *in forma pauperis* (ECF No. 4) is **VACATED** and plaintiff’s motion to proceed *in forma pauperis* (ECF No. 1) is **DENIED** in accordance with 28 U.S.C. § 1915(g).

**IT IS FURTHER ORDERED** that defendant’s motion to dismiss (ECF No. 10) is **DENIED** as moot.

**IT IS FURTHER ORDERED** that plaintiff’s motion to appoint counsel (ECF No. 18) is

**DENIED** as moot.

**IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice to plaintiff's right to reopen by paying the full \$350.00 filing fee.

**IT IS FURTHER ORDERED** that the report and recommendation (ECF No. 24) dated February 15, 2012, as supplemented by this order, is **ADOPTED** as the opinion of the court.

**IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

/s/ Joy Flowers Conti  
Joy Flowers Conti  
United States District Judge

Lee H. Wagner  
AJ-2441  
SCI Cresson  
PO Box A  
Cresson, PA 16699